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Department, Keith Pleich,
7 *And Scott Rasmussen*

8 UNITED STATES DISTRICT COURT

9 DISTRICT OF NEVADA

10 DENISE ABBEY, individually, and as special
11 administrator of the ESTATE OF MICAH ABBEY,

Case No.: 3:13-cv-00347-VPC-LRH

12 Plaintiffs,

13 vs.

14 CITY OF RENO; RENO POLICE
15 DEPARTMENT; KEITH PLEICH individually
and in his official capacity as a Police Officer for
16 CITY OF RENO and RENO POLICE
DEPARTMENT; DANIEL BOND individually
17 and in his official capacity as a Police Officer for
CITY OF RENO and RENO POLICE
18 DEPARTMENT; SCOTT RASMUSSEN
19 individually and in his official capacity as a
Police Officer for CITY OF RENO and RENO
20 POLICE DEPARTMENT; BRAD
DEMITROPOULIS;
21 And DOES through X, inclusive.

22 Defendants.

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24 **DEFENDANTS CITY OF RENO, RENO POLICE DEPARTMENT, KEITH PLEICH,**
AND SCOTT RASMUSSEN'S ANSWER TO THE SECOND AMENDED COMPLAINT

25
26 COMES NOW, Defendants CITY OF RENO, RENO POLICE DEPARTMENT, KEITH
27 PLEICH, AND SCOTT RASMUSSEN'S, (hereinafter CITY OF RENO), by and through their
28

1 attorneys, JOHN J. KADLIC, Reno City Attorney and JACK D. CAMPBELL, Deputy Reno City
2 Attorney, hereby answers Plaintiff's Complaint by admitting, denying and averring as follows.

3 **(Introduction)**

- 4 1. CITY OF RENO denies the allegations in Paragraph No. 1.

5 **(Jurisdiction and Venue)**

- 6 2. CITY OF RENO admits to this Court's jurisdiction for the instant action but denies
7 the remaining allegations in Paragraph No. 2.
- 8 3. CITY OF RENO admits the venue is properly vested with this Court pursuant to
9 Paragraph No. 3.

10 **(Parties)**

- 11 4. CITY OF RENO is without knowledge or information sufficient to form a belief as
12 to the truth or falsity of the allegations in Paragraph No.4.
- 13 5. CITY OF RENO is without knowledge or information sufficient to form a belief as
14 to the truth or falsity of the allegations in Paragraph No. 5.
- 15 6. CITY OF RENO admits that it is a municipality organized as such pursuant to the
16 laws of the State of Nevada, but is without knowledge or information sufficient to
17 form a belief as to the truth or falsity of the allegations in Paragraph No. 6.
- 18 7. CITY OF RENO admits that the RENO POLICE DEPARTMENT is a police
19 department in the State of Nevada. CITY OF RENO is without knowledge or
20 information sufficient to form a belief as to the truth or falsity of the allegations in
21 Paragraph No. 7.
- 22 8. CITY OF RENO admits that KEITH PLEICH is an Officer with the Reno Police
23 Department. CITY OF RENO is without knowledge or information sufficient to
24 form a belief as to the truth or falsity of the remaining allegations in Paragraph No.
25 8.
- 26 9. CITY OF RENO admits that DANIEL BOND is an Officer with the Reno Police
27 Department. CITY OF RENO is without knowledge or information sufficient to
28

1 form a belief as to the truth or falsity of the remaining allegations in Paragraph No.
2 9.

3 10. CITY OF RENO admits that SCOTT RASMUSSEN is an Officer with the Reno
4 Police Department. CITY OF RENO is without knowledge or information
5 sufficient to form a belief as to the truth or falsity of the remaining allegations in
6 Paragraph No. 10.

7 11. CITY OF RENO is without knowledge or information sufficient to form a belief as
8 to the truth or falsity of the allegations in Paragraph No. 11.

9 12. CITY OF RENO is without knowledge or information sufficient to form a belief as
10 to the truth or falsity of the allegations in Paragraph No. 12. Furthermore, CITY
11 OF RENO reserves the right to amend this Answer should Plaintiff name any
12 additional party as identified in this paragraph.

13 13. CITY OF RENO denies the allegations in Paragraph No. 13.

14 14. CITY OF RENO admits to the allegations in Paragraph No. 14.

15 15. CITY OF RENO has no objection to the Complaint being pled in the alternative
16 pursuant to Fed.R.Civ.P. 8(d)(2).

17 **(Factual Background)**

18 16. CITY OF RENO reaffirms and incorporates its answers to Paragraphs 1 through
19 15, above, as if set forth here in verbatim.

20 17. CITY OF RENO is without knowledge or information sufficient to form a belief as
21 to the truth or falsity of the allegations in Paragraph No. 17.

22 18. CITY OF RENO is without knowledge or information sufficient to form a belief as
23 to the truth or falsity of the allegations made regarding Micah Abbey's mental,
24 physical, and emotional conditions, but denies the remaining allegations that the
25 CITY OF RENO knew or should have known about said conditions.

26 19. CITY OF RENO is without knowledge or information sufficient to form a belief as
27 to the truth or falsity of the allegations in Paragraph No. 19.
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20. CITY OF RENO is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph No. 20.
21. CITY OF RENO is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph No. 21.
22. CITY OF RENO is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph No. 22.
23. CITY OF RENO is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph No. 23.
24. CITY OF RENO is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph No. 24.
25. CITY OF RENO is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph No. 25.
26. CITY OF RENO is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph No. 26.
27. CITY OF RENO is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph No. 27.
28. CITY OF RENO is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph No. 28.
29. CITY OF RENO denies allegations in Paragraph No. 29.
30. CITY OF RENO is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph No. 30.
31. CITY OF RENO denies allegations in Paragraph No. 31.
32. CITY OF RENO is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph No. 32.
33. CITY OF RENO is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph No. 33.
34. CITY OF RENO denies allegations in Paragraph No. 34.
35. CITY OF RENO denies allegations in Paragraph No. 35.

36. CITY OF RENO denies allegations in Paragraph No. 36.

37. CITY OF RENO denies allegations in Paragraph No. 37.

38. CITY OF RENO denies allegations in Paragraph No. 38.

39. CITY OF RENO denies allegations in Paragraph No. 39.

40. CITY OF RENO denies allegations in Paragraph No. 40.

41. CITY OF RENO denies allegations in Paragraph No. 41.

42. CITY OF RENO admits that Defendants removed the RIPP restraints and handcuffs, and started cardio pulmonary resuscitation as alleged in Paragraph No. 42. CITY OF RENO denies the allegations about the Reno Fire Department's and Remsa's success.

43. CITY OF RENO is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph No. 43.

44. CITY OF RENO is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph No. 44.

45. CITY OF RENO denies the allegations in Paragraph No. 45.

46. CITY OF RENO admits to the allegations in Paragraph No. 46.

47. CITY OF RENO denies the allegations in Paragraph No. 47.

48. CITY OF RENO denies the allegations in Paragraph No. 48.

49. CITY OF RENO denies the allegations in Paragraph No. 49.

50. CITY OF RENO denies the allegations in Paragraph No. 50.

51. CITY OF RENO denies the allegations in Paragraph No. 51.

COUNT I

(Violation of 42 U.S.C.A § 1983)

52. CITY OF RENO reaffirms and incorporates its answers to Paragraphs 1 through 51, above, as if set forth here in verbatim.

53. CITY OF RENO denies the allegations in Paragraph No. 53.

54. CITY OF RENO denies the allegations in Paragraph No. 54, including subsections a-e.

1 55. CITY OF RENO denies the allegations in Paragraph No. 55.

2 56. CITY OF RENO denies the allegations in Paragraph No. 56.

3 57. CITY OF RENO denies the allegations in Paragraph No. 57.

4 58. CITY OF RENO denies the allegations in Paragraph No. 58.

5 **COUNT II**

6 (Violation of 42 U.S.C.A § 1983)

7 (MONELL CLAIM)

8 59. CITY OF RENO reaffirms and incorporates its answers to Paragraphs 1 through
9 58, above, as if set forth here in verbatim.

10 60. CITY OF RENO denies the allegations in Paragraph No. 60, including
11 subsections a-h.

12 61. CITY OF RENO denies the allegations in Paragraph No. 61.

13 62. CITY OF RENO denies the allegations in Paragraph No. 62.

14 63. CITY OF RENO denies the allegations in Paragraph No. 63.

15 64. CITY OF RENO denies the allegations in Paragraph No. 64.

16 65. CITY OF RENO denies the allegations in Paragraph No. 65.

17 66. CITY OF RENO denies the allegations in Paragraph No. 66

18 67. CITY OF RENO denies the allegations in Paragraph No. 67; including subsections
19 a-j.

20 68. CITY OF RENO denies the allegations in Paragraph No. 68.

21 **COUNT III**

22 (NEGLIGENCE)

23 69. CITY OF RENO reaffirms and incorporates its answers to Paragraphs 1 through
24 68, above, as if set forth here in verbatim.

25 70. CITY OF RENO is without knowledge or information sufficient to form a belief as
26 to the truth or falsity of the allegations in Paragraph No. 70.

27 71. CITY OF RENO is without knowledge or information sufficient to form a belief as
28 to the truth or falsity of the allegations in Paragraph No. 71.

1 72. CITY OF RENO is without knowledge or information sufficient to form a belief as
2 to the truth or falsity of the allegations in Paragraph No. 72.

3 73. CITY OF RENO is without knowledge or information sufficient to form a belief as
4 to the truth or falsity of the allegations in Paragraph No. 73.

5 74. CITY OF RENO denies the allegations in Paragraph No. 74

6 75. CITY OF RENO denies the allegations in Paragraph No. 75.

7 **COUNT IV**

8 (ASSAULT AND BATTERY)

9 76. CITY OF RENO reaffirms and incorporates its answers to Paragraphs 1 through
10 75, above, as if set forth here in verbatim.

11 77. CITY OF RENO denies the allegations in Paragraph No. 77.

12 78. CITY OF RENO denies the allegations in Paragraph No. 78.

13 **COUNT V**

14 (WRONGFUL DEATH)

15 79. CITY OF RENO reaffirms and incorporates its answers to Paragraphs 1 through
16 78, above, as if set forth here in verbatim.

17 80. CITY OF RENO is without knowledge or information sufficient to form a belief as
18 to the truth or falsity of the factual allegations in Paragraph No. 80.

19 81. CITY OF RENO is without knowledge or information sufficient to form a belief as
20 to the truth or falsity of the factual allegations in Paragraph No. 81.

21 82. CITY OF RENO is without knowledge or information sufficient to form a belief as
22 to the truth or falsity of the factual allegations in Paragraph No. 82.

23 83. CITY OF RENO denies the allegations in Paragraph No. 83.

24 **AFFIRMATIVE DEFENSES**

25 **FIRST AFFIRMATIVE DEFENSE**

26 Micha Abbey knowingly, voluntarily, and unreasonably assumed the risk of the conduct,
27 events, and matters alleged in the Complaint such that any damages or injuries sustained by
28 Plaintiffs were the direct, proximate, and legal result of the risks so assumed.

1 **SECOND AFFIRMATIVE DEFENSE**

2 The Plaintiffs' injuries and damages alleged in the Complaint were caused by
3 independent, intervening causes and not by any negligence, act, omission, or other conduct,
4 intentional or otherwise, on the part of the CITY OF RENO.

5 **THIRD AFFIRMATIVE DEFENSE**

6 During the time of the incident alleged in the Complaint, Plaintiffs have failed to conduct
7 themselves as reasonable persons would if confronted with the same facts and circumstances.
8 Therefore, Plaintiffs have failed to mitigate their damages.

9 **FOURTH AFFIRMATIVE DEFENSE**

10 Plaintiffs' damages were caused by the conduct of independent third parties which the
11 CITY OF RENO could not directly influence or control. Therefore, CITY OF RENO is not
12 responsible or liable for such independent third party actions. Furthermore, CITY OF RENO
13 reserves the right to amend this pleading should the identity of these third parties become known.

14 **FIFTH AFFIRMATIVE DEFENSE**

15 The Complaint fails to state a claim against the CITY OF RENO upon which relief may
16 be granted.

17 **SIXTH AFFIRMATIVE DEFENSE**

18 Micha Abbey failed to conduct himself as a reasonable person facing the same facts and
19 circumstances. Abbey was negligent in and about the matters alleged in the complaint, and such
20 negligence directly, proximately and legally contributed to the injuries and damages such that
21 Abbey's comparative negligence is greater than the negligence of the CITY OF RENO, and the
22 combined negligence of all named defendants thereby barring recovery by the Plaintiffs pursuant
23 to NRS 41.141.

24 **SEVENTH AFFIRMATIVE DEFENSE**

25 CITY OF RENO is immune from liability in this matter pursuant to NRS 41.032.

26 **EIGHTH AFFIRMATIVE DEFENSE**

27 The award of punitive damages is not recoverable against the CITY OF RENO and the
28 named individuals in their official capacity.

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NINTH AFFIRMATIVE DEFENSE

The Reno Police Officers are entitled to qualified immunity.

TENTH AFFIRMATIVE DEFENSE

Defendants are granted qualified, discretionary, and good faith immunity to the claims made herein.

ELEVENTH AFFIRMATIVE DEFENSE

CITY OF RENO cannot be held liable for the acts alleged herein pursuant to NRS 41.0336.

TWELTH AFFIRMATIVE DEFENSE

After reasonable investigation and inquiry, the CITY OF RENO believes the affirmative defenses presented herein are applicable, subject to the obligations set forth in the FRCP 11. CITY OF RENO reserves the right to amend this pleading to include any additional or further affirmative defenses as their basis becomes known and relevant.

WHEREFORE, DEFENDANT, CITY OF RENO, prays for judgment as follows:

1. That Plaintiff takes nothing by reason of her Complaint, and that the same be dismissed with prejudice.
2. For an award of all costs and fees incurred in presenting a defense herein.
3. For an award of all attorney's fees incurred in presenting a defense herein.
4. For any additional or further relief this Court may deem just and proper.

DATED this 24th day of September, 2013.

JOHN J. KADLIC
Reno City Attorney

By: /s/ JACK D. CAMPBELL
JACK D. CAMPBELL
Deputy City Attorney
Nevada State Bar #4938
Post Office Box 1900
Reno, Nevada 89505
(775) 334-2050
*Attorneys for City of Reno,
Reno Police Department,
Keith Pleich, and Scott Rasmussen*

CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I certify that I am an employee of the RENO CITY ATTORNEY'S OFFICE, and that on this date, I am serving the foregoing document(s) on the party(s) set forth below by:

_____ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.

_____ Personal delivery.

 X CM/ECF electronic service

_____ Facsimile (FAX).

_____ Federal Express or other overnight delivery.

_____ Reno/Carson Messenger Service.

addressed as follows:

Richard Salvatore, Esq.
HARDY LAW GROUP
96 & 98 Winter Street
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Attorney for Plaintiff

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Attorney for Plaintiff

DATED this 24th day of September, 2013.

/s/ Christine Felch
Christine Felch, Legal Assistant